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6 UNITED STATES DISTRICT COURT

7 DISTRICT OF NEVADA

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9 BRIT FANUEL AUGBORNE, III,

Case No. 2:19-cv-01204-KJD-BNW

10 Petitioner,

ORDER

11 v.

12 BRIAN WILLIAMS, et al.,

13 Respondents.
14

15 On April 28, 2020, this court granted in part respondents' motion to dismiss
16 certain claims in Brit Fanuel Augborne, III's pro se 28 U.S.C. § 2254 habeas corpus
17 petition as unexhausted and/or conclusory (ECF No. 15). Augborne then filed several
18 motions, one of which he styled as a motion for reconsideration (ECF No. 18). He told
19 the court that he had never received the motion to dismiss, and therefore, he never had
20 an opportunity to respond. Thus, the court directed that the motion to dismiss and
21 exhibits be re-sent to Augborne and gave him the opportunity to file an opposition to the
22 motion to dismiss (ECF No. 21). Augborne filed two responses (ECF Nos. 22, 24) and
23 respondents replied (ECF No. 23).

24 In granting the motion to dismiss, the court agreed with respondents that
25 Augborne did not present grounds 1 or 2 to the highest state court, and therefore, they
26 are unexhausted. When Augborne had the opportunity to oppose the motion to dismiss,
27 he mainly argued that his claims are meritorious. He did assert that he brought at least
28 some parts of grounds 1 and 2 in his state proceedings (ECF No. 22). However, as the

1 court concluded in granting the motion to dismiss, Augborne did not present federal
2 grounds 1 or 2 to the highest state court. Augborne has not presented any basis for the
3 court to revisit its decision granting in part the motion to dismiss.

4 Augborne will have 30 days from the date this order is entered to make the
5 election that the court directed in its April 28, 2020 order (ECF No. 15); he must choose
6 to either (1) return to state court to exhaust his unexhausted petition, in which case his
7 federal habeas petition will be denied without prejudice;¹ or (2) file a motion asking this
8 court to stay and abey his unexhausted federal habeas petition while he returns to state
9 court to exhaust his unexhausted claims.

10 **IT IS THEREFORE ORDERED** that petitioner's motion to grant petition and
11 motion for reconsideration (ECF Nos. 16 and 18) are both **DENIED**.

12 **IT IS FURTHER ORDERED** that petitioner's motion to extend time to file a
13 response to the motion to dismiss (ECF No. 19) is **GRANTED** *nunc pro tunc*.


14 **IT IS FURTHER ORDERED** that within **30 days** of the date of this order
15 petitioner must either:

16 1. Inform the court that he wishes to return to state court to
17 exhaust his unexhausted petition, in which case his federal habeas petition
18 will be denied without prejudice; or

19 2. File a motion asking this court to stay and abey his
20 unexhausted federal habeas petition while he returns to state court to
21 exhaust his unexhausted claims.

22 **IT IS FURTHER ORDERED** that if petitioner fails to respond to this order, this
23 action may be dismissed.

24 DATED: November 12, 2020



25 KENT J. DAWSON
26 UNITED STATES DISTRICT JUDGE

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28 ¹ The court makes no assurances as to the timeliness of any future-filed petition.